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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re H.T. et al, Persons Coming Under
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

M.T. et al.,

Defendants and Appellants.

E072182

(Super.Ct.No. RIJ111937)

OPINION

APPEAL from the Superior Court of Riverside County. Cheryl C. Murphy, Judge.

Affirmed.

Roni S. Keller, under appointment by the Court of Appeal, for Defendant and
Appellant M.T.

Karen J. Dodd, under appointment by the Court of Appeal, for Defendant and
Appellant L.L.

Gregory P. Priamos, County Counsel, James E. Brown, Anna M. Marchand, and Prabhath Shettigar, Deputy County Counsel, for Plaintiff and Respondent.

Appellants L.L. (mother) and M.T. (father) are the parents of H.T. and F.T. (the children). Their parental rights as to the children were terminated. Father and mother (the parents) filed separate briefs on appeal and both claim that the beneficial relationship exception applied. (Welf. & Inst. Code¹, § 366.26, subd. (c)(1)(B)(i).) They also join in each other's arguments. We affirm.

FACTUAL BACKGROUND

On April 4, 2017, the Riverside County Department of Public Social Services (DPSS) filed a petition under section 300 on behalf of the children, who were three-year-old twin girls. The petition contained allegations of the parents' substance abuse, failure to supervise and protect the children, and prior dependency history. Such history included that the children were previously removed from the parents after they were born positive for opiates (they were returned under family maintenance), and that mother had failed to reunify with seven of her other children.

On April 5, 2017, the juvenile court detained the children and ordered twice weekly supervised visitation with the parents.

¹ All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

Jurisdiction/Disposition

The social worker filed a jurisdiction/disposition report on April 21, 2017, and recommended that the court sustain the petition, deny mother reunification services under section 361.5, subdivision (b)(10), (b)(11), and (b)(13), and deny father services under section 361.5, subdivision (b)(13).

On April 26, 2017, the parents requested a contested jurisdiction hearing. The hearing was continued multiple times thereafter.

In an addendum report, the social worker reported that the parents were often 15 to 20 minutes late to visits. There was no discipline or structure during the visits. After the visits, the children would become aggressive and begin to fight.

In another addendum report filed on July 13, 2017, the social worker reported that the parents continued to be late to visits or cancel at the last minute. The social worker observed that the parents had “not made visitation a priority.” On or around a visit on June 26, 2017, father appeared to be under the influence and was falling asleep. At a visit on July 10, 2017, the children began to cry the minute they saw mother; there was no provocation or indication they were hurt.

The social worker further reported that the parents did not act appropriately during another visit in July 2017. Mother brought a box of cereal with a high sugar content and let the children eat the whole box. She also encouraged them not to participate in potty training. Sometimes, the parents got into screaming matches, and the staff had to intervene. The social worker reported that father was not very involved in the visits and stayed “off to the side.” At a visit on August 7, 2017, the parents were 15 minutes late,

and father lay down on the floor outside of the visitation room during the visit. The children's foster parent reported that, on August 10, 2017, the parents gave a lot of junk food to the children at the visit. When the foster parent took them home, F.T. threw up, and H.T. had diarrhea. The staff told the parents to not to bring unhealthy snacks to the visits, but they continued to bring junk food in excess.

The social worker additionally reported that the parents continued to be inconsistent with the visits. They cancelled a visit on June 19, 2017, and on July 5, 2017 and August 16, 2017, they did not show up or call to cancel. The social worker recommended that visitation be reduced to once a month.

The social worker reported that the parents missed their visit on September 20, 2017, and again did not call to cancel. The foster parent continued to report that the children came home from visits acting aggressively toward each other, and that F.T. would bite herself.

The social worker subsequently reported that, on November 1, 2017, the court authorized visitation between father and the children at father's MFI Recovery Program. Mother said it was too far for her, and she wanted the visits to remain at the agency. The social worker reported that father had a visit with the children on November 9, 2017. Father seemed more engaged, fed the children a healthy snack, and played with them. However, at her visits, mother continued to take the children junk food, knowing they would eat anything she gave them. When the staff would talk to her about it, she would get upset and say that she was the mother and could give the children anything she wanted.

On December 14, 2017, the foster parent contacted the social worker to inform her that mother brought two big bags of Cheetos and a Pop-Tart for each child to a visit. The children finished everything, and they both had diarrhea the next day at school. The children's teacher submitted notes stating that the children had diarrhea on several days following visits with mother.

On January 3, 2018, the social worker spoke with an agency staff worker, who reported that mother came to her visit very ill. The staff worker explained to mother that she should be mindful of the children's well-being and not kiss them on the mouth, so they would not get sick. Mother said they were her children, and she could kiss them if she wanted. She did not express any concern for them getting sick. Later that day, the foster parent called to report that F.T. was sick and was taken to the doctor for medication.

The court finally held a contested jurisdiction hearing on January 11, 2018, and sustained the petition, finding that the children came within section 300, subdivision (b).

The court held a contested disposition hearing on January 16, 2018. It adjudged the children dependents of the court and removed them from the parents' custody. The court denied mother reunification services under section 361.5, subdivision (b)(10), (b)(11), and (b)(13). However, it ordered reunification services to be provided to father. As to visitation, the court ordered mother and father to have separate visits. It ordered mother to have supervised visits at least two times a month, and she was not to bring any food, unless previously approved. As to father, it ordered DPSS to liberalize the visits to include unsupervised, overnight/weekends, and placement on family maintenance, based

upon his compliance with his case plan, if appropriate. His case plan included the requirements that he participate in counseling, a parenting class, and substance abuse treatment.

On June 25, 2018, the court granted the foster parents de facto parent status, at their request.

Six-month and 12-month Status Reviews

The social worker filed a six-month status review report on July 3, 2018, recommending that the court terminate father's services, set a section 366.26 hearing, and set adoption as the permanent plan. The social worker reported her concerns about father's visits. He had a supervised visit on February 20, 2018, and he raised his voice with the children throughout the entire time. He made several phone calls during the visit, including one to mother, with whom he now had a no-contact criminal protective custody order. He also called the children by the wrong names several times and threatened to spank them if they did not stop doing certain things. The social worker reported that father appeared to be very frustrated with the children.

Father had another two-hour visit on February 26, 2018. Throughout the visit, the children played near a bookcase. They were pulling items off the bookcase and climbing on it, while father was occupied on his cell phone. They pulled it toward them, and he ran toward them and stopped it from falling on them. He then blamed DPSS for not bolting it to the wall. Father also continued to call the children by the wrong names.

At another visit on April 2, 2018, father put a movie on for the children and sat on the couch talking on his cell phone. When they were not listening to him, he would yell at them, rather than get up to redirect them.

At a visit on May 8, 2018, father was on his cell phone for part of the visit, while the children watched a movie. H.T. began having a temper tantrum, and father yelled at her to stop. Toward the end of the visit, F.T. started having a temper tantrum and took her shoes off and threw them at father. She appeared to be intentionally defiant and refused to listen to him. He raised his voice at her, while he was “in her face.”

Meanwhile, H.T. pushed the emergency button in the room; so the supervisor entered the room and told father he needed to monitor both of them more appropriately. Later, H.T. opened the door, grabbed her purse, and appeared ready to end the visit early.

Regarding mother, the social worker reported that she was supposed to have visits twice a month. Mother engaged with the children, but attempted to bring sugary drinks and inappropriate toys. The social worker noted that the children often had tantrums during visits and gave mother trouble. The foster parent reported that, following mother’s visits, F.T. was more aggressive in behavior (e.g., biting).

The social worker concluded there was no substantial probability the children would be returned to mother’s custody, due to her extensive history with child protective services and substance abuse. The social worker noted that mother was not able to maintain long-term sobriety, and the risk to the children if returned to her was very high. Similarly, the social worker concluded there was no substantial probability of return to father’s custody, as he had not benefitted from his services. She noted that he continued

to bring unhealthy snacks, referred to the children in derogatory terms, lacked the ability to appropriately supervise them during two-hour visits, and lacked insight as to adequate parenting.

On July 16, 2018, the court held a six-month review hearing and a 12-month status review and set both matters contested, at father's request. It also reduced the parents' visits to once a month.

The court held a hearing on August 21, 2018, at which it terminated reunification services and set a section 366.26 hearing.

Father subsequently filed an extraordinary writ pursuant to California Rules of Court, rule 8.452, which this court denied.

Section 366.26 and Section 388

The social worker filed a section 366.26 report on December 6, 2018, recommending that the court terminate parental rights. Since the court had reduced mother's visitation, she had three supervised visits. The social worker reported that mother engaged with the children, but noted that they often had tantrums during the visits. After the visits F.T. was more aggressive and would bite her sister. As to father, the social worker continued to be concerned with his ability to parent and discipline the children during visits. The foster parent similarly reported that the children were more aggressive after the visits with him, and they bit and fought with each other.

The social worker additionally reported that the children had been placed with the prospective adoptive parents for 10 months and were thriving in the home. The prospective adoptive parents were able to meet their physical, emotional, developmental,

medical, and educational needs. The children were benefitting from the stability and routine of the prospective adoptive home. They were bonded with the prospective adoptive parents, who had previously adopted their half brother. The children were also developing a close attachment to him. The social worker specifically noted that the children had made huge improvements in their speech, overall behavior, and social skills, since being placed with this family. The prospective adoptive parents were committed to providing the children with a loving, permanent home and had already embraced them as part of their family.

On January 3, 2019, father filed a section 388 petition, requesting the court to return the children to him on family maintenance.

In an addendum report filed on February 8, 2019, the social worker reported that father was initially not consistent in visiting the children, but had been visiting once a month since September 2018. However, the social worker stated that the children did not appear to be bonded with father.

The court held a combined hearing pursuant to sections 388 and 366.26 on February 19, 2019. It denied father's section 388 petition. Mother's counsel then contended that the beneficial parental relationship exception applied, asserting that the children looked forward to visiting with mother and cried at the conclusion of visits. He concluded: "That in itself shows that there is a bond between the mother and the children." He argued for legal guardianship, rather than adoption as the permanent plan. Father's counsel also argued that the exception applied, stating that father felt his children

were bonded to him since they referred to him as father, greeted him, and were sometimes sad at the conclusion of visits.

In addressing the parents' request to apply the beneficial parental bond exception, the court stated that it "read all the reports on the entire case." It then declared: "I don't see that there is such a bond that would overcome what's best for the children. I have read, as pointed out by county counsel, with regard to father, that not always do the children cry when they leave him. They don't appear to be bonded. They are happy to go back with the caregivers. I know there were some times with mom the children may have cried when they have left her. I think there is a natural sense that the children may have of having mother and father and visiting with them."

The court went on to state, "But in terms [of] the totality of the issues that have gone on, the information in this case, the parents not reunifying with other children, mother . . . recently had some issues in the criminal courts, I don't see that they have circumstances where they will be able to reunify with the children, even if given the six months additional services." The court noted that the prospective adoptive parents were providing for all the needs of the children and were very bonded to them, and the children were thriving. It concluded that it was in the children's best interest to continue in their home.

The court proceeded to find no probability of return within the next six months, and that it was likely the children would be adopted. It noted that mother was denied services pursuant to section 361.5, subdivision (b)(10), (b)(11), and (b)(13). The court

found that none of the exceptions applied, and that adoption was in the children's best interest. It then terminated mother's and father's parental rights.

ANALYSIS

The Beneficial Parental Relationship Exception Did Not Apply

The parents contend that the court erred in not applying the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i). We disagree.

A. Relevant Law

At a section 366.26 hearing, the court determines a permanent plan of care for a dependent child. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Adoption is the permanent plan preferred by the Legislature. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) If the court finds that a child may not be returned to his or her parents and is likely to be adopted, it must select adoption as the permanent plan, unless it finds a compelling reason for determining that termination of parental rights would be detrimental to the child under one of the exceptions set forth in section 366.26, subdivision (c)(1)(B).

One such exception is the beneficial parental relationship exception set forth in section 366.26, subdivision (c)(1)(B)(i). (See *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206.) This exception applies when the parents "have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) The phrase "benefit from continuing the relationship" refers to a parent/child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the

natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)). It is the parent's burden to show that the beneficial parental relationship exception applies. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1345.)

B. The Court Properly Terminated Parental Rights

At the outset, mother claims the court based its decision not to apply the beneficial parental relationship exception on improper factors, such as her failure to reunify with her other children, her "current issue in the criminal court," its belief that she would not be able to reunify with the children if provided with six more months of services, and the caretakers' bond with the children. We disagree.

At the hearing, both parents argued that the beneficial parental relationship exception applied. The court specifically addressed their claims, stating that it considered all the reports in the record and "[did not] see that there is such a bond that would overcome what's best for the children." The court recounted that the reports showed the children did not appear to be bonded with father, and they did not always cry when they left him. The court noted that the children "[were] happy to go back with the caregivers." As to mother, the court acknowledged there were times when "the children may have cried when they have left her." It commented that "there is a natural sense that the children may have of having mother and father and visiting with them."

The court went on to mention the factors that mother points out on appeal. However, the court appeared to have concluded its remarks regarding the beneficial parental relationship exception when it mentioned those factors. It mentioned those factors during its final remarks on the case, right before announcing that it was terminating parents' rights and finding adoption to be in the best interest of the children. Thus, the court did not appear to rely on those factors in concluding the beneficial parental relationship did not apply.

In any event, mother and father fail to show that the beneficial parental exception actually did apply. In support of her position, mother asserts that she "developed a strong parent-child bond with the twins, gaining overnight visits in October 2014, when the girls were seven months old." She points to evidence that a social worker at that time said she was bonded with her children. However, the children were detained in the instant case on April 5, 2017. Thus, mother is referring to a time prior to the instant case, when the children were placed in the parents' care under family maintenance.

Mother further claims "the strong parent-child bond remained" throughout the instant dependency. The main evidence she points to is the social worker's report which stated that the children "look[ed] forward to visiting with the mother, and [cried] at the conclusion of the visitation." She asserts that this report was uncontradicted and "[t]he only logical inference [was] that there was a significant parent-child bond." As to father's claim, he merely asserts that the court erred by terminating parental rights and not applying the beneficial parental relationship exception, with no supporting argument.

First, the parents did not maintain consistent visitation with the children. (§ 366.26, subd. (c)(1)(B)(i).) The evidence shows they were often late to visits, or cancelled at the last minute. Sometimes they did not show up at all and did not call to cancel.

Second, mother's and father's interactions with the children do not even begin to demonstrate that their relationship with them promoted the children's well-being "to such a degree as to outweigh the well-being the child[ren] would gain in a permanent home with new, adoptive parents." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Neither parent has proffered any evidence to support a finding that the children had a "substantial, positive emotional attachment [with them] such that [they] would be greatly harmed" if the relationship was severed. (*Ibid.*) To the contrary, the record shows that the children were not attached to mother. At one visit, the children began to cry the minute they saw her. Furthermore, mother's visits did not promote the children's well-being, but were actually detrimental. She insisted on bringing junk food, and she let them eat everything in excess. The foster parent and the children's teachers reported that the children either threw up or had diarrhea the next day after visits. Mother continued to bring junk food, showing no concern. Mother came to one visit when she was very ill. The staff worker explained that she should be mindful of the children's well-being and not kiss them on the mouth, but mother showed no concern for them getting sick and apparently kissed them anyway. F.T. became sick that day and had to be taken to the doctor for medication. Additionally, the children often came home from visits acting aggressively toward each other, and F.T. would bite herself.

As to father, the evidence did not demonstrate any bond with the children either. At one visit, he appeared to be under the influence and was falling asleep. At other visits, when the children were not listening to him, he would often just yell at them. The social worker reported that father appeared to be very frustrated with them. He made phone calls during visits, and just let the children watch a movie. He also called them by the wrong names several times, at different visits. The foster parent reported that the children were more aggressive after the visits with father, and they bit and fought with each other. At one visit, F.T. started having a temper tantrum and took her shoes off and threw them at father. She appeared to be intentionally defiant and refused to listen to him. He was unable to redirect her, but raised his voice at her, while he was “in her face.” Meanwhile, H.T. pushed the emergency button in the room. Later, H.T. opened the door and appeared ready to end the visit early. The evidence was very telling.

In contrast, the evidence shows that the children had a strong bond with the prospective adoptive parents, who were successfully meeting their emotional, physical, and educational needs. While living with this family, the children made huge improvements in their speech, overall behavior, and social skills. They were also developing a close bond with their older brother, who had been adopted by the same family. The prospective adoptive parents felt like the children were part of their family, and they were committed to adopting them.

We conclude that the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i), did not apply here.²

DISPOSITION

The court's orders are affirmed.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

FIELDS
J.

² We acknowledge father's additional argument that, should the judgment terminating mother's parental rights be reversed, the judgment terminating his parental rights must also be reversed. In light of our conclusion, we decline to address this claim.